

REMARKS

Reconsideration and allowance of Claims 39-59 is respectfully requested in view of the following remarks.

Election by Original Presentation

The Office Action asserts that Claims 40-59 contain claims directed to twelve (12) patentably distinct species. Applicants provisionally elect Claims 39, 45-46, 54-55 and 58 (Species I) with traverse. The Office Action asserts that the indicated species are distinct because they are directed to related inventions. The Office Action indicates that Claims 39 and 54 are generic claims. The Office Action, by way of example, asserts that “Species 1 and Species 2 are distinct since in Species 1 only one offer is required to be generated and in Species 2 a plurality of offers are required to be generated with each offer being associated with a different provider.” Applicants respectfully submit that the species restriction of Claims 40-59 is improper. Rather than being directed to different species, Applicants submit that Claims 40-44 and 47-53 further describe features of independent Claim 39. For example, Claim 40 further describes “generating an offer” in Claim 39, Claims 41, 43-44 and 52 further describe “receiving a request” in Claim 39, and Claim 42 further describes “receiving a response” in Claim 39. Claim 56 further describes “generates an offer” of Claim 54, and Claim 57 further describes “receives a response” of Claim 54. For at least the foregoing reasons, Applicants respectfully request the restriction of claims 40-59 be withdrawn.

Rejection under 35 U.S.C. § 101

Claims 54-55 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. The Office Action asserts that “Claims 54-55 claim a server and a database which can represent mere code/software that is a data structure resembling a data file without executing any functional changes due to an application program and resulting in a useful, concrete, and tangible result.” Applicants respectfully submit that the 35 U.S.C. 101 rejections of Claims 54-55 are improper. Claim 54 recites a server that “generates an offer associated with a provider of telecommunication services to provide the at least one telecommunication service to the buyer in

response to receiving the request and the information” and “notifies the provider of the response and an identity of the buyer.” Applicants respectfully submit that these features of Claim 54 produce a useful, concrete, and tangible result in the form of generating an offer to a buyer and notifying a provider of a response and an identify of the buyer. Applicants respectfully request the 35 U.S.C. 101 rejections of Claims 54-55 be withdrawn.

Rejection under 35 U.S.C. § 103(a)

Claims 39, 45-46, 54-55 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,345,090 to Walker et al. (“*Walker*”) in view of U.S. Patent No. 5,999,908 to Abelow (“*Abelow*”).

Regarding Claim 39, *Walker* teaches a conditional offer management system for telephone calls. As discussed in the previous response mailed on May 7, 2007, *Walker* differs from Applicants’ invention in numerous ways. For example, Applicants respectfully submit that *Walker* fails to teach or suggest the feature of Claim 39 of “receiving a request for purchasing at least one telecommunication service at a server, the request being associated with a buyer.” In the Response to Arguments, the Office Action asserts that “*Walker* teaches generating an offer from the provider of services in the form of either accepting the terms of the buyer’s request in CPO or rejecting the terms of the buyer’s request in the CPO.” As discussed in the previous response, a conditional purchase offer, as cited by *Walker*, is not a request. A CPO is defined by *Walker* as “a binding offer containing one or more conditions, submitted by a calling party 110 for the completion of one or more telephone calls, typically at a price defined by the calling party.” (*Walker*, col. 4, lines 53-56, emphasis added). A request for purchasing as claimed by Applicants and a CPO or binding offer as cited by *Walker* are not the same. As a result, the receiving a request portion of Claim 39 is not taught, suggested, or disclosed by *Walker*.

Applicants further claim, “receiving information from the buyer regarding prior use of telecommunication services of the buyer; generating an offer to provide the at least one telecommunication service to the buyer in response to receiving the request and the information...” The Examiner combines *Walker* and *Abelow* to form an argument of obviousness for this aspect of Claim 39.

There is no apparent reason, teaching, suggestion, or motivation to combine *Walker* and *Abelow*. The Examiner has improperly used hindsight to combine *Walker* and *Abelow*. The subject matter of *Walker* and *Abelow* use completely different systems, as a result, the combination of the references for an obviousness rejection is improper. *Abelow* is directed toward a method of integrating vendor and customer feedback for developing products and services using computers. (*Abelow*, col. 8, lines 5-14). In particular, *Abelow* does not teach a purchasing system. In other words, there is no apparent reason to combine *Walker* and *Abelow* based on the subject matter and applicable fields.

Abelow teaches a customer-based product design module that functions based on user feedback obtained while customers are using a product to redesign and improve the product (*Abelow*, col. 9, lines 37-45). The user feedback is obtained while a customer is currently using a product; the user feedback is not prior use information. However, even if the user feedback and prior use information were assumed to be the same, the user feedback is not used in a purchasing system in any manner, much less to generate an offer as claimed in Claim 39. The feedback in *Abelow* is specifically directed toward designing and altering products and services. (*Abelow*, col. 8, lines 8-49).

In the Response to Arguments, the Office Action asserts that “in *Abelow*, just like in claim 39, user’s past record of his use of products/services [products and services can include any types of telecommunications services] is utilized to improve future offering of products/services to the user and therefore there is a need to receive information from the buyer about prior use products/services.” Applicants respectfully disagree. As discussed above *Abelow* contains no teaching of the user of prior use information of telecommunication services of a buyer. Furthermore, despite the assertion that “products and services can include any types of telecommunication services”, there appears to be no teaching or suggestion whatsoever in *Abelow* that relates to telecommunication services as found in Claim 39.

Abelow does not disclose, teach, or suggest receiving prior use information or using prior use information to generate an offer to provide telecommunication services in response to receiving a request. There is no apparent reason to combine the two references to reach the claimed subject matter.

For at least these reasons, *Walker* and *Abelow* do not disclose, teach, and suggest an explicit rationale for combining references to make obvious the unique combination recited by Claim 39 nor is there any apparent reason to do so.

For at least the foregoing reasons, Applicants respectfully submit that Independent Claim 39 and its dependents are allowable. Independent Claims 54 and 58 include similar features as those found in Independent Claim 39. Applicants respectfully submit that Claims 54 and 58 and their dependents are allowable for similar reasons.

CONCLUSION

For the foregoing reasons, and for other apparent reasons, Applicants respectfully request reconsideration and favorable action. If the Examiner feels a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

Applicants believe that no fees other than the fees submitted herewith are due. However, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-2816 under Order No. 020748.0103PTUS (formerly 07710.0001-0) from which the undersigned is authorized to draw.

Respectfully submitted,

PATTON BOGGS, LLP



Michael W. Maddox
Registration No. 47,764
2001 Ross, Suite 3000
Dallas, Texas 75202
Phone: 214/748-1500
Fax: 214/748-1550

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